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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

B5

Date:

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

NOV 02 2011

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting company. It seeks to employ the beneficiary permanently in the United States as a Senior Systems Analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the beneficiary did not possess the required education for the offered position as set forth in the labor certification. The director denied the petition accordingly.

In a request for evidence (RFE) dated August 31, 2011, the AAO requested evidence to establish that the beneficiary possessed the required education for the offered position as set forth in the labor certification.<sup>1</sup> This office also requested additional information to establish that the petitioner has the ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and continuing up to the present. Specifically, the petitioner was instructed to submit Forms W-2 or 1099 (if any) for the beneficiary for 2007, 2008, 2009, and 2010, and tax returns or audited financial statements for the petitioner for 2007, 2008, 2009, and 2010.

This office allowed the petitioner 45 days in which to respond to the RFE. In the RFE, the AAO specifically alerted the petitioner that failure to respond to the RFE would result in dismissal since the AAO could not substantively adjudicate the appeal without the information requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). More than 45 days have passed and the petitioner has failed to respond with proof that the beneficiary possessed the required education for the offered position and that it has the ability to pay the beneficiary the proffered wage and. Thus, the appeal will be dismissed as abandoned.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).